

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

GARY W. RICH and LAW OFFICE OF GARY W. RICH, L.C.,)
)
)
Plaintiffs/Counter-Defendants,) Civil Action No. 1:12-cv-12-IMK
)
v.) Judge Irene Keeley
)
JOSEPH SIMONI,) Magistrate Judge John S. Kaull
)
Defendant/Counter-Plaintiff.)
)
GARY W. RICH and LAW OFFICE OF GARY W. RICH, L.C.,)
)
)
Third-Party Plaintiffs,)
)
v.)
)
BARON AND BUDD, a professional corporation; COCHRAN, CHERRY, GIVENS, SMITH, LANE & TAYLOR P.C.; and LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, P.A.,)
)
)
Third-Party Defendants.)
)

STATUS REPORT OF GARY W. RICH AND LAW OFFICE OF GARY W. RICH, L.C.

Plaintiffs/Counter-Defendants/Third-Party Plaintiffs Gary W. Rich and the Law Office of Gary W. Rich, L.C. hereby submit this status report in accordance with the Court's Amended Summary Order of May 1, 2015. (Doc. 225.) As the Court is aware, on or about March 31, 2015 counsel for Levin Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., William F. Cash III, filed a complaint with the West Virginia Office of Disciplinary Counsel. On April 10, 2015, the Supreme Court of Appeals of West Virginia issued its answer to the question certified by this Court. In its Opinion, the Court recounted Dr. Simoni's claims with respect to his alleged communications with Mr. Rich and other lawyers and law firms (including the Third-Party

Defendants) and his past and present demands for payment from those lawyers and firms and others. *Rich v. Simoni*, 772 S.E.2d 327, 327-30 n.3, n.8, n.9, n.14 (2015). After answering the certified question, the Court stated that “[b]ased upon this Court’s concerns that the attorneys involved in this case may have engaged in unethical conduct with regard to fee-sharing agreements, we are alerting the Office of Disciplinary Counsel regarding the need for further inquiry into these matters.” *Id.* at 335.

The current status of the ODC investigation is that it is ongoing. The ODC has not indicated to Mr. Rich or the Law Office of Gary W. Rich, L.C. what further steps, if any, the ODC will take or what timetable to expect for the completion of its investigation.

We do note, however, one repeated misstatement by counsel for the Third-Party Defendants in their status report of October 20, 2015.¹ (Doc. 231.) The Third-Party Defendants claim that “[t]he Office of Disciplinary Counsel has not responded to our calls or writings” (Doc. 231 at 1), that after April 17, 2005, “there was no further contact originating from the ODC to Cash or anyone else at any of the Third-Party Defendant law firms” (*id.* at 3), and that “[w]e have not heard from the ODC in over six months.” (*Id.* at 4.) None of these statements are true.

Omitted from the series of documents attached to the Third-Party Defendants’ status report is the August 13, 2015 email of the Chief Lawyer Disciplinary Counsel, Rachael L. Fletcher Cipoletti, directed to Mr. Cash and Ms. Goodman. (Attached hereto as Exhibit A.) In that email, Ms. Cipoletti specifically informs Mr. Cash that his claim that he had contacted the ODC on three occasions and each time failed to receive a status update “is incorrect” and expressly states that “[t]he complaint that you filed is open and under investigation at this time.”

¹ We also note for the record that we dispute the Third-Party Defendants’ assertion that “[t]he contracts we have with Rich permit us to recover our monetary costs from him” (Doc. 231 at 2.) In fact, none of the Third-Party Defendants have any contract with Mr. Rich. Further, the contracts that do exist between the Third-Party Defendants and the Law Office of Gary W. Rich, L.C. do not permit them to recover “monetary costs” as the Third-Party Defendants presently claim. As such, those claims fail both legally and factually.

(Exh. A.) The Third-Party Defendants' claims about being kept "in the dark about the status of the ODC's investigation, if any" (Doc. 231 at 4) are, therefore, inaccurate and disingenuous.

Because the ODC's investigation remains ongoing, we submit that there is no need for the telephone conference the Court scheduled for November 6, 2015. There is nothing for the parties to discuss at this time and judicial economy would be better served by continuing the stay and resetting the conference for a later date. Accordingly, Mr. Rich and the Law Office of Gary W. Rich, L.C. respectfully request that the Court continue its stay of this matter pending the outcome of the ODC's investigation, reschedule the telephone conference for a mutually convenient date approximately six months out, and request a further status report from the parties on or about April 29, 2016.

Respectfully submitted,

DATED: October 30, 2014

/s/ E. Ryan Kennedy

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CERTIFICATE OF SERVICE

I, E. Ryan Kennedy, counsel for Plaintiffs/Counter-Defendants Gary W. Rich and the Law Office of Gary W. Rich, L.C., do hereby certify that I have caused to be served the foregoing **STATUS REPORT OF GARY W. RICH AND LAW OFFICE OF GARY W. RICH, L.C.** upon the below counsel of record this 30th day of October, 2015, via the Court's electronic filing system:

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DATED: October 30, 2015

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